

**Dr Yusuff bin Hj Mansur v Changkat Jering Sdn Bhd
& Anor**

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO P280 OF 1985
MOHD NOOR AHMAD J
6 JUNE 1997

Damages (Personal Injury or Death) — *Personal injuries — Brain damage — Manic depressive psychosis — Loss of intellectual and cognitive functioning — Impairment in reasoning logical thinking and impaired ability to plan and organize tasks — Whether case should be classified as ‘unconscious’ or ‘vegetable’ cases — Factors to be considered in awarding damages*

Damages (Personal Injury or Death) — *Personal injuries — Loss of earnings — Pre-trial and post-trial loss — Assessment*

Damages (Personal Injury or Death) — *Personal injuries — Loss of future earnings — Post-trial loss of future earnings in respect of post-retirement income — Assessment*

As a result of a road accident on 14 September 1981, the plaintiff suffered a form of mental illness known as ‘manic depressive psychosis’ as diagnosed in 1987. Liability was conceded by the defendants on a 100% basis. The plaintiff had an impressive array of both academic and professional qualifications and, at the time of the accident, was employed as a mineral engineer. On 21 April 1986, he was appointed Prof Madya by Universiti Teknologi Malaysia (‘the university’). On 25 January 1988, his services were terminated on medical grounds. The plaintiff complained that he was depressive when he started teaching at the university as he was unable to function satisfactorily. Among other things, he had difficulty in concentration, there was loss of intellectual and cognitive functioning, he showed impairment in reasoning logical thinking and an impaired ability to plan and organize tasks. There was a significant drop in IQ taking into account his academic and professional achievements. The learned senior assistant registrar awarded, inter alia: (i) RM60,000 for manic depressive psychosis; and (ii) RM155,349.50 for pre-trial loss of earnings from 1 February 1988 to 31 July 1994. No award was made for the loss of post-retirement income from 1 August 1994. The plaintiff appealed against the assessment order.

Held, allowing the appeal:

- (1) It would be wrong both on principle of law and on the apprehension of facts to treat the plaintiff’s case as similar to the ‘unconscious’ or ‘vegetable’ cases. The plaintiff was not a mere vegetable but a conscious sufferer. In that condition, it would be particularly painful and distressing for a person such as the plaintiff with his intellectual achievements to find himself in the condition he was now in, especially to be incapable of any intellectual work. Therefore, his case should be classified similar to ‘severe brain damage’ cases (see pp 536D–E and 537B–C).

- A (2) In determining the award, the proper approach was to consider the nature of the mental illness, its effects on the plaintiff and also the personality and intellectual capacity and the potential he had demonstrated before the accident and the onset of his mental illness in 1987. An award of RM110,000 for the plaintiff would reflect a fair award under that head (see pp 537F and 538E);
- B *Liong Thoo v Sawiyah & Ors* [1982] 2 MLJ 156, *Hamid bin Awang v Yeo Kim Kuan* [1966] 1 MLJ 129, *Raja Mokhtar bin Raja Yaacob v Public Trustee, Malaysia* [1970] 2 MLJ 151, *Pickett v British Rail Engineering Ltd* [1980] AC 136, *K Ratnasingam v Kow Ah Dek & Anor* [1983] 2 MLJ 297, *Chan Sau Chuan v Choi Kong Chow & Anor* [1991] 1 CLJ 29, *Kuppusamy a/l Sundarajoo v Nithanathan a/l Muniandy* [1990] 1 CLJ 1148 and *Tan Cheong Poh & Anor v Teoh Ah Keow* [1995] 3 MLJ 89 followed.
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- (3) With regard to the award to loss of earnings, the correct approach for pre-1984 accidents was to work out the pre-trial (between the date of accident and the date of trial) and post-trial (the date of trial and the retirement age of 55) components.

In this case, the total pre-trial loss of earnings would be RM139,050 and the total loss of post-trial future earnings in respect of pre-retirement period would be RM150,400 (see pp 538I and 539A-I); *Lim Eng Kay v Jaafar* [1982] 2 MLJ 156 followed.

- E (4) It was wrong not to make any award for post-trial loss of future earnings in respect of the post-retirement period. The principle of a claim for post-retirement income for pre-1984 accidents has been clearly established; such claim may be limited to a claim for loss of retirement income to persons with professional and technical skills. The plaintiff was certainly in this category. In this case, although no recommendation and no application for extension had been made, having regard to the plaintiff's excellent qualifications, promising ability and promotion prospects, his chances for promotion being extended for five years were highly probable. It was not necessary to prove actual extension but proof on a balance of probabilities would suffice. On the facts of the case, the loss of post-retirement earnings would be RM232,000 (see pp 539I and 540A, D-H); *K Ratnasingam v Kow Ah Dek & Anor* [1983] 2 MLJ 297 and *Nani v WG Williams* [1986] 2 MLJ 68 followed.

[Bahasa Malaysia summary]

Akibat suatu kemalangan jalan raya pada 14 September 1981, plaintiff mengalami sejenis penyakit mental yang dikenali sebagai 'psikosis manik depresif' seperti yang didiagnosis dalam tahun 1987. Liabiliti diakui oleh defendan-defendan pada dasar 100%. Plaintiff mempunyai kelulusan akademik dan profesional yang mengagumkan dan, pada masa kemalangan, digaji sebagai seorang jurutera mineral. Pada 21 April 1986, dia telah dilantik sebagai Prof Madya oleh Universiti Teknologi Malaysia ('universiti tersebut'). Pada 25 Januari 1988, perkhidmatannya diberhentikan atas alasan kesihatan. Plaintiff

mengadu bahawa beliau berasa murung sewaktu mula mengajar di universiti tersebut kerana beliau tidak dapat berfungsi dengan memuaskan. Antara lain, beliau tidak dapat menumpukan perhatian, terdapat kehilangan fungsi intelektual dan kognitif, beliau menunjukkan kelemahan dalam pertimbangan pemikiran logik dan dalam keupayaan untuk merancang dan mengatur tugas. Terdapat kemerosotan yang ketara dalam IQ memandangkan pencapaian akademik dan profesional. Penolong kanan pendaftar yang bijaksana telah mengawardkan, antara lain: (i) RM60,000 untuk psikosis manik depresif; dan (ii) RM155,349.50 untuk kehilangan pendapatan pra-perbicaraan dari 1 Februari 1988 hingga 31 Julai 1994. Tiada award telah dibuat untuk kehilangan pendapatan selepas pesaraan dari 1 Ogos 1994. Plaintif merayu terhadap perintah taksiran.

Diputuskan, membenarkan rayuan:

- (1) Adalah salah atas kedua-dua prinsip undang-undang dan atas penelitian fakta untuk menganggap kes plaintif bagaikan kes-kes 'tidak sedar diri' atau 'vegetable'. Plaintif bukanlah sekadar seorang 'vegetable' tetapi seorang pesakit yang sedar. Dalam keadaan itu, adalah amat menyakitkan dan menyedihkan untuk seseorang seperti plaintif dengan pencapaian intelektual beliau untuk mendapati dirinya dalam keadaan begini, terutamanya ketidakupayaan membuat sebarang kerja intelektual. Oleh itu, kesnya patut dikelaskan sama dengan kes-kes 'kecederaan otak yang parah' (lihat ms 536D-E dan 537B-C).
- (2) Dalam menentukan award, pendekatan yang wajar adalah untuk mempertimbangkan jenis penyakit mental, kesannya pada plaintif dan juga personaliti dan keupayaan intelektual dan potensi yang ditunjukkannya sebelum kemalangan dan permulaan penyakit mental dalam tahun 1987. Suatu award sebanyak RM110,000 untuk plaintif akan membayangkan award yang adil di bawah bahagian itu (lihat ms 537F dan 538E); *Liong Thoo v Sawiyah & Ors* [1982] 2 MLJ 156, *Hamid bin Awang v Yeo Kim Kuan* [1966] 1 MLJ 129, *Raja Mokhtar bin Raja Yaacob v Public Trustee, Malaysia* [1970] 2 MLJ 151, *Pickett v British Rail Engineering Ltd* [1980] AC 136, *K Ratnasingam v Kow Ah Dek & Anor* [1983] 2 MLJ 297, *Chan Sau Chuan v Choi Kong Chow & Anor* [1991] 1 CLJ 29, *Kuppusamy all Sundarajoo v Nithanathan all Muniandy* [1990] 1 CLJ 1148 dan *Tan Cheong Poh & Anor v Teoh Ah Keow* [1995] 3 MLJ 89 diikuti.
- (3) Berkenaan dengan award kehilangan pendapatan, pendekatan yang betul untuk kemalangan pra-tahun 1984 adalah untuk mengira komponen pra-perbicaraan (antara tarikh kemalangan dan tarikh perbicaraan) dan selepas perbicaraan (tarikh perbicaraan dan umur pesaraan iaitu 55).

Dalam kes ini, jumlah kehilangan pendapatan pra-perbicaraan adalah sebanyak RM139,050 dan jumlah kehilangan pendapatan masa depan selepas perbicaraan berkaitan dengan tempoh pra-

- A pesaraan adalah RM150,400 (lihat ms 538I dan 539A-I); *Lim Eng Kay v Jaafar* [1982] 2 MLJ 156 diikuti.
- (4) Adalah salah untuk tidak membuat sebarang award bagi kehilangan pendapatan masa depan selepas perbicaraan berkenaan dengan tempoh selepas pesaraan. Prinsip tuntutan untuk pendapatan selepas pesaraan bagi kemalangan pra-tahun 1984 jelas telah dibuktikan;
- B tuntutan demikian boleh dihadkan kepada tuntutan untuk kehilangan pendapatan pesaraan kepada mereka yang mempunyai kemahiran profesional and teknikal. Plaintiff ternyata berada dalam kategori ini. Dalam kes ini, walaupun tiada syor dan tiada permohonan untuk pelanjutan telah dibuat, dengan mengambil kira kelulusan cemerlang plaintiff, kebolehan yang cerah dan prospek kenaikan pangkat, peluang kenaikan pangkat beliau dilanjutkan selama lima tahun adalah mungkin. Adalah tidak perlu untuk membuktikan melampaui pelanjutan sebenar tetapi bukti atas imbalan kebarangkalian memadai. Atas fakta kes, kehilangan pendapatan selepas pesaraan adalah RM232,000 (lihat ms 539I dan 540A, D-H); *K Ratnasingam v Kow Ah Dek & Anor* [1983] 2 MLJ 297 dan *Nani v WG Williams* [1986] 2 MLJ 68 diikuti.]
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Notes

- E For cases on damages awarded as a result of brain injury, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 415-421.
For cases on loss of earnings, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 593-608.

Cases referred to

- F *Chan Sau Chuan v Choi Kong Chow & Anor* [1991] 1 CLJ 29 (folld)
Davies & Anor v Powell Duffryn Associated Collieries Ltd [1942] AC 601 (refd)
Hamid bin Awang v Yeo Kim Kuan [1966] 1 MLJ 129 (folld)
K Ratnasingam v Kow Ah Dek & Anor [1983] 2 MLJ 297 (folld)
- G *Kathavarayan v Ng Sup Moi & Anor* [1987] 1 MLJ 246 (refd)
Kuppusamy a/l Sundarajoo v Nithanathan a/l Muniandy [1990] 1 CLJ 1148 (folld)
Lim Eng Kay v Jaafar [1982] 2 MLJ 156 (folld)
Liong Thoo v Sawiyah & Ors [1982] 2 MLJ 156 (folld)
Nani v WG Williams [1986] 2 MLJ 68 (refd)
- H *Pickett v British Rail Engineering Ltd* [1980] AC 136 (folld)
Raja Mokhtar bin Raja Yaacob v Public Trustee, Malaysia [1970] 2 MLJ 151 (folld)
Tan Cheong Poh & Anor v Teoh Ah Keow [1995] 3 MLJ 89 (folld)
Ward v Malaysian Airline System Bhd [1991] 3 MLJ 124 (refd)
- I *R Sivarasa (Daim & Gamany)* for the plaintiff/appellant.
K Mohan Krishnan (Sri Ram & Co) for the defendant/respondent.

Mohd Noor Ahmad J: This is an appeal against the assessment order of the learned senior assistant registrar ('the SAR') made on 30 September 1995 pursuant to the direction of Wan Mohd J on 28 October 1991. Liability was conceded by the defendants on a 100% basis. A

The SAR made the following awards:

General damages for pain and suffering and loss of amenities: B

(a) Injury of the eye	RM18,000
(b) Lacerations and scars	4,000
(c) Impairment of hearing	4,000
(d) Fracture of scaphoid with residuals	4,000

RM30,000

Manic depressive psychosis RM60,000

Global figure RM90,000 C

Special damages or pre-trial pecuniary loss

(a) Nursing care	—	Nil
(b) Cost of maid	—	Nil
(c) Cost of medication	—	Nil
(d) Nourishing food	—	Nil

Loss of earnings (Pre-trial loss of earnings from 1 February 1988–31 July 1994) D

Allowed — Multiplier of four years E

For the first three years

RM3,250 x 3 years' purchase RM106,206.65

(annuity table)

Fourth year

RM4,300 x 1 year purchase 49,142.85 G

(annuity table)

RM155,349.50

Cost of post-trial future care, etc — Nil H

Loss of post-retirement income from 1 August 1994 — Nil

Agreed special damages (neuro medical clinic report) — RM1,600

Interest:

General damages — 8% pa from date of service of summons till date of judgment. I

Loss of earnings — 4% pa from 1 February 1988 to date of agreed special damages judgment. Eight per cent on the total judgment debt from date of judgment to realization.

A The appeal is only against:

- (1) The award for manic depressive psychosis.
- (2) The award for pre-trial loss of earnings from 1 February 1988 to 31 July 1994.
- (3) The loss of post-retirement income from 1 August 1994.

B Briefly, the facts revealed that as the result of a road accident on 14 September 1981, the plaintiff suffered a form of mental illness known as 'manic depressive psychosis' as diagnosed in 1987, where there was a period of severe depression followed by a period of mania with evidence of post-traumatic intellectual deficit. The mental illness was probably related to the psychological reaction secondary to the intellectual and physical disabilities resulting from the accident.

C Before the accident, the plaintiff had obtained a First Class Honours from the Camborne School of Metalliferous Mining (ACSM), which is equivalent to a degree in engineering, a degree of Doctor of Philosophy in the Department of Metallurgy from the University of Strathclyde, Glasgow and a Master of Science in petroleum exploration studies from the University of Aberdeen. He was also a member of several professional bodies connected to mining and petroleum engineering. He also held a Dredgemaster Certificate.

D At the time of the accident, he was employed as a mineral engineer with Pernas Charter Management Sdn Bhd but was retrenched on 31 January 1986 due to the downturn in economy. On 21 April 1986, he was appointed Prof Madya by Universiti Teknologi Malaysia as a researcher in the Research and Development Department. However, on 25 January 1988 his services were terminated on medical grounds.

E The principle upon which an appellate court can interfere with the award has been stated by Lord Wright in *Davies & Anor v Powell Duffryn Associated Collieries Ltd* [1942] AC 601 at pp 616-617 as follows:

G Where ... the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer LJ in *Flint v Lovell* [1935] 1 KB 354. In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.

H Also, it is trite that an appellate court should be wary in disturbing the findings of the trial court on facts and credibility of witnesses. The questions here therefore are:

- (i) has the SAR acted on a wrong principle of law; or
- (ii) has he misapprehended the facts; or

- (iii) has he made a wholly erroneous estimate of the damages suffered; or A
(iv) has he committed a serious error on his findings of facts and credibility?

It is rather unfortunate that the grounds of judgment of the SAR is not before this court and there is no indication from the notes of evidence that he had considered the credibility of the witnesses. Therefore, at this rehearing I am entitled to assess the evidence and make a finding of facts and on credibility. B

On the facts, I am satisfied that:

- (i) The plaintiff had a most impressive array of both academic and professional qualifications. C
(ii) He was a person with professional and technical skills.
(iii) He suffered manic depressive psychosis as a result of the accident.
(iv) He could not perform in his work as Prof Madya and his services with the University were terminated because of the mental illness.
(v) He is unemployable because of the mental illness. D

On the award for manic depressive psychosis, the SAR awarded RM60,000. To my mind, if in making the award he had treated the plaintiff's case as similar to the 'unconscious' or 'vegetable' cases, he was wrong both on principle of law and the apprehension of facts. And if he had classified the plaintiff's case similar to 'severe' brain damage' cases, he would have made a wholly erroneous estimate of the damage suffered. E

The focus for consideration on the plaintiff's mental condition should be on Dr Syed Hassan's report which was not challenged. The report painted a gloomy picture of him and of his future. According to the report, the plaintiff complained that he was depressive when he started teaching at the University as he was unable to function satisfactorily. He had difficulty in concentration. His interpersonal relationship was impaired and he felt rejected and isolated. This affected his competency in doing his job. He had sleep disturbance and tended to ruminate frequently about his difficulties. He also had sexual inadequacy and was unable to have a sexual relationship following the accident. On admission, his mental state assessment showed he was deluded, the affect was inappropriate and the behavior was disinhibited. He had no insight into his illness. The findings were that he had some loss of intellectual and cognitive functioning. There was a significant drop in IQ since taking into account his academic and professional achievement. In addition, it was noted that there was attention and concentration deficits, he was easily distractible, his recent memory was inadequate and the concept formation and abstract thinking was impaired. He also showed impairment in reasoning logical thinking and an impaired ability to plan and organize tasks. The evidence which is not challenged reveals that the plaintiff is independent in so far as the activities of daily living are concerned (eating, bathing, dressing, etc). F
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However, he is now a man with a changed personality who would give vent to his distress through anger and sometimes violence against members of his family. Although his IQ, coordination and logical thinking

A have been reduced, it does not mean that he was not aware of what he was in the past. The fact that he applied for and accepted the post of Prof Madya at the University is a manifestation of his awareness of his academic and professional qualifications. To my mind, upon a scrutiny of Dr Syed Hassan's report, the phrase 'He had no insight into his illness' simply means that at the time of his relapse on 5 July–27 July 1987 he did not fully understand he was ill. In short, he is not a mere vegetable but a conscious sufferer. In that condition, it would be particularly painful and distressing for a person such as the plaintiff with his intellectual achievements to find himself in the condition he is now in, especially to be incapable of any intellectual work. Therefore, his case should be classified similar to 'severe brain damage' cases.

This case is somewhat similar to the case of *K Ratnasingam v Kow Ah Dek & Anor* [1983] 2 MLJ 297, where the Federal Court and the Privy Council confirmed the award of RM70,000 under this head made in 1979 by Ajaib Singh J. There, the plaintiff who was 37 years old at the time of the accident, was described as a man 'of considerable distinction' and proved himself as an outstanding teacher. After obtaining a BA Degree, he entered the civil service and was clearly marked out for promotion and proved himself an energetic, popular and successful headmaster. The injury caused a change in personality and prevented him from passing examinations necessary for promotion and even confirmation in his job. He became depressed, uncomfortable, restless and he was not the same man as he was before the accident. There was no indication from the judgment that he was not independent. However, he was able to continue working. To my mind, in the present case, the fact that there is minimal deprivation of ordinary life for the plaintiff should not be the determining factor for the award, but the proper approach is to consider the nature of the mental illness, its effects on the plaintiff and also the personality and intellectual capacity and potential he demonstrated before the accident and the onset of his mental illness in 1987.

In fixing the correct quantum, I rely on the following cases. In *Liong Thoo v Sawiyah & Ors* [1982] 2 MLJ 156, Chan J (as he then was) stated that RM70,000 as awarded in *Hamid bin Awang v Yeo Kim Kuan* [1966] 1 MLJ 129 and RM80,000 in *Raja Mokhtar bin Raja Yaacob v Public Trustee, Malaysia* [1970] 2 MLJ 151 were not the same in monetary terms when his Lordship decided the case in 1981 and the award had to be one which represented a comparable amount in current money values at the time the award was made (see *Pickett v British Rail Engineering Ltd* [1980] AC 136). *Ratnasingam's* case was decided 16 years before the impugned award was made (30 September 1995). Hence, it is necessary to ensure that the award is in line with comparable recent awards. In *Chan Sau Chuan v Choi Kong Chow & Anor* [1991] 1 CLJ 29, where the plaintiff had made a full physical recovery but experienced a severe change in personality, Lim Beng Choon J awarded RM100,000 for a head injury leading to brain damage. However, although the plaintiff in that case was not independent, the case indicates the increase of quantum in such awards to compensate for the value of money at that time. In *Kuppusamy all Sundarajoo v*

Nithanathan all Muniandy [1990] 1 CLJ 1148, Edgar Joseph Jr J (as he then was) awarded RM110,000, where according to the medical report the plaintiff had sustained a diffuse irreversible brain injury which left him with severe permanent disabilities; although he was independent in so far as the activities of daily living were concerned (eating, bathing, dressing), he was unable to return to his former occupational level because of his physical and mental disabilities. He displayed an impaired emotional control leading to bursts of anger and inability to persist in any constructive behaviour and he suffered difficulties with emotional control, insight and intellectual deficit, etc. The features in that case are similar to that of the plaintiff's case. In the more recent case of *Tan Cheong Poh & Anor v Teoh Ah Keow* [1995] 3 MLJ 89, where RM100,000 was awarded for a brain injury resulting in severe neurological disabilities, the Court of Appeal at p 98G opined (per VC George JCA):

While we are prepared to say that the RM100,000 awarded under this head was perhaps on the low side, we do not think it should have been anywhere near RM140,000.

In that case, the conditions of the plaintiff were more serious than the plaintiff's here. Be that as it may, the case shows that more recent awards for that sort of injury with similar deficits have been much higher than RM60,000 as awarded by the SAR.

In the light of the above, I am of the view that an award of RM110,000 for the plaintiff would reflect a fair award in September 1995 under that head.

With regard to the award for loss of earnings, the SAR arrived at the award for pre-trial loss of earnings apparently based on the following computation.

When the plaintiff's services were terminated by the University (25 January 1988), he was 49 years old. The retiring age was taken at 55 years (31 July 1994). The plaintiff, therefore, would have a working lifespan of six years. There is a need to scale down the six years by the usual $\frac{1}{3}$ on account of contingencies and capitalization which would leave a multiplier of four years.

For the first three years

RM3,250 (last drawn net income) x 3 years purchase = RM106,206.65
(based on the annuity tables)

For the fourth year (based on increased salary)

RM4,300 x 1 year purchase = RM49,142.85
(based on the annuity tables)

The total is RM155,349.50

To my mind, that method was correct only for post-1984 accidents. The correct approach for pre-1984 accidents is to work out the pre-trial and post-trial components (see the Federal Court case of *Lim Eng Kay v Jaafar* [1982] 2 MLJ 156 at p 159). Hence, the SAR had erred on principle of law. The proper approach should be:

- A (a) pre-trial period — that is to say, between the date of the accident and the date of trial,
(b) post-trial period — that is to say, between the date of trial and the retiring age of 55 years.

B *The pre-trial period*

- In this case, the date of accident should be substituted with 1 February 1988 when his services were terminated (on 25 January 1988), and the date of trial should be 25 January 1991 when the trial first began before the judge (see *Lim Eng Kay's* case at p 159H-I). Therefore, there should be approximately three years or 36 months for the pre-trial period. It is not disputed that at the time of termination, the plaintiff had another 15 months left as Prof Madya on the salary scale A9 drawing RM2,920 with allowance of RM900 (see exhs P-1A and P-1B). After a tax deduction of 15%, his net income would have been RM3,250. Therefore, the loss of earnings should be 15 months x RM3,250 = RM48,750. There remains a balance of another 21 months during the pre-trial period. It is also not disputed that his salary as full professor would be RM3,570 with allowances of RM1,500 (see exhs P-2A and P-2B). After 15% tax deduction, it would have been RM4,300. Therefore, the loss should be 21 months x RM4,300 = RM90,300. Hence, the total pre-trial loss of earnings should be RM48,750 + RM90,300 = RM139,050.
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The post-trial period

- This period should run from 25 January 1991 to 31 July 1994 (the date of retirement) which is approximately 3½ years or 42 months. However, there is a need to scale this down by the usual ⅓ on account of contingencies and capitalization leaving a final figure of 28 months (see *Ward v Malaysian Airline System Bhd* [1991] 3 MLJ 124). In order to compute the amount of loss of earnings for the period, it is necessary to split the period into two parts because the new salary scale under the SSB came into effect on 1 January 1992. The two parts are from 25 January 1991 to 1 January 1992 (about 12 months) and from 1 January 1992 to 31 July 1994 (about 30 months). The ratio between the two parts are 1:2.5, that is to say, out of the scaled down figure of 28 months, eight months should be allotted to the first part and 20 months to the second part. Under the first part, he would still be receiving the same net income of RM4,300. Therefore, the loss should be RM4,300 x 8 months = RM34,400. Under the second part, he would have been probably put on the new scale VK7 as set out in exh P-3B, ie salary of RM4,830 on point 1 with RM2,000 allowances making a total of RM6,830. A tax deduction of 15% would make it RM5,800. Therefore, the loss should be RM5,800 x 20 months = RM116,000. Hence the total post-trial loss of future earnings in respect of pre-retirement period is RM34,400 + RM116,000 = RM150,400.
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The SAR did not make any award for post-trial loss of future earnings in respect of the post-retirement period. To my mind, having regard to the

evidence and the precedents, he was wrong both on principle of law and the apprehension of facts. A

It is evident that the age of compulsory retirement at the University was 55. Hence, only the extension of service up to the age of 60 is in issue. However, I have to highlight here also the evidence on promotion in order to support my decision where the pre-trial and post-trial loss of earnings is awarded based on different salary scales and allowances. The evidence of PW3 and PW4 revealed that the promotion was done by the University Council on the recommendation of the Board of Selection after an interview. It depended on the plaintiff's performance and that he must do his job well. Assuming that there were no medical problems, he should be one of those promoted quite early and that it was certain that he would be promoted if he performed. There was no restriction on the number of officers who could become professors. Many officers in the Research and Development Department were made professors in 1986, ie 10 out of 40 Prof Madya were made professors. On the extension of service, the extension might be up to 65 but the cases cited by the witnesses, up to 60. However, the applicant must apply for the extension, its success would depend on health, expertise, vacancy and performance. Although no recommendation had been made for his promotion — and that no application for extension of service was ever made by him — having regard to his excellent qualifications, promising ability and promotion prospects, to my mind, his chances of promotion and the likelihood of his services being extended for five years were highly probable. It is not necessary to prove actual extension but proof on a balance of probabilities would suffice. Hence, the claim under this head is not remote and speculative. B C D E

The principle of a claim for post-retirement income for pre-1984 accidents has been clearly established: see *Ratnasingham's* case and *Nani v WG Williams* [1986] 2 MLJ 68 where the awards for loss of post-retirement earnings were made. In *Kathavarayan v Ng Sup Moi & Anor* [1987] 1 MLJ 246, Siti Norma Yaakob J (as she then was) preferred to limit a claim for loss of retirement income to persons with professional and technical skills. The plaintiff in the case before me was certainly in this category. F

Therefore, the calculation based on five years or 60 months' extension will be, 60 months scaled down by $\frac{1}{3}$ on account of contingencies and capitalization will leave a balance of 40 months. There is nothing in the evidence to indicate how long a professor would be on point 1 in scale VK under the SSB before he would be moved to point 2 in the scale. In fairness to the defendants, I assume the plaintiff would still be on point 1 in the scale. Therefore, the loss of post-retirement earnings would be RM5,800 x 40 months = RM232,000. G H

Therefore, the appeal is allowed with costs here and below. The order of the SAR in respect of the relevant awards and interests thereon is set aside. And the following awards are hereby ordered: I

- (1) General damages for pain and suffering for manic depressive psychosis

RM110,000

A	(2) Pre-trial loss of earnings (Special damages)	RM139,050
	(3) Post-trial loss of future earnings in respect of pre-retirement period	RM150,400
	(4) Post-trial loss of future earnings in respect of post-retirement period	RM232,000

B Interest on item (1) is at 8% per annum from the date of service of the writ to the date of my judgment and interest on item (2) is at 4% per annum from 1 February 1988 to the date of my judgment. Interest at 8% on all the items from the date of my judgment to realization.

C *Appeal allowed.*

Reported by Eugene Lee Hong Whye

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